TESTIMONY OF ALLAN H. GORDON
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BEFORE THE HOUSE JUDICIARY COMMITTEE
REGARDING JOINT AND SEVERAL LIABILITY

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Good Afternoon Chairman Gannon, ladies and gentlemen. Thank you for the opportunity to be here today and speak to you on behalf of the 13,000 members of the Philadelphia Bar Association opposing the repeal of joint and several liability.

To put it very simply, the rule of joint and several liability is common sense and to enact any legislation which abolishes this rule is will unquestionably cause further harm to the already injured party. Any type of repeal legislation will cause harm to those least able to bear it. The rule of joint and several liability ensures that those injured are fully compensated and the burden is born by those who can bear the burden. Logically, the wrongdoer should be the one bearing the burden, not the victim.

A simple demonstration of joint and several liability would be when three young men who have been out on the town, so to speak, and they enter the hotel in which they are staying. The three are visibly intoxicated but proceed to the hotel bar for another round of drinks. The bartender notices that they are intoxicated but does nothing and serves them another drink. After finishing the drink, the three young men leave the bar and head to the hotel pool. The lifeguard notices that they are intoxicated but does nothing to prohibit them from entering the pool

nor does the lifeguard ask the three to leave the pool area. While at the pool area, the three begin to harass another guest and then proceed to throw the guest into the shallow end of the pool whereby the guest suffers sever injuries and will be a quadriplegic for the reminder of his life. Who should bear the loss? The hotel guest who was at the pool? That makes no sense! Who should be held responsible financially -- the young man who thought of the idea to begin the horseplay, the one who first grabbed the hotel guest, or the third young man who didn't stop the other two? What about the bartender who served them their last drinks? Or the lifeguard who saw that they were intoxicated but let them enter the pool area? Should there be a determination of who was "more" wrong in their actions in order to determine financial liability to the plaintiff? Of course not! Should the injured hotel guest have to track down everyone who was involved in the incident? Without joint and several liability, the burden clearly rests on the victim, once liability is demonstrated, to track down anyone and everyone having any connection with the incident. Clearly in the hotel swimming pool scenario, the hotel would liable and the one most able to bear the burden would be required to remunerate the hotel guest for injuries and then seek recourse from the remaining participants.

A second example would be a situation where three people are drag racing down a city street. A mother and her daughter are walking down the sidewalk of the street. Some bumping of the cars occurs and one of the cars jumps the curb and injures the mother and, sadly, kills the child. Who should be held responsible?

Clearly, all three drag racers were involved in the incident and all three are responsible for the injuries to the mother and death to the child. However, only one has any assets. Should we force the mother and the child's estate to determine which one is more liable? Of course not!

It should be noted that the doctrine of joint and several liability only applies when the defendants have already been found to be fully responsible for the harm caused. It does not create a situation where individual defendants are unreasonably shouldering the burden for other wrongdoers. When the doctrine is applied it is based on the plaintiff's injury having directly occurred due to the action of several defendants' conduct, which the court has found not to have been too remote or minimal to have caused the harm. The doctrine and its application is clearly one based on logic and common sense. To impose the full burden of the determined damages on an individual defendant is in no way unfair and makes a great deal of sense since all of the defendants have been found to be fully responsible for the plaintiff's injuries.

I think it is safe to assume that there isn't anyone here who thinks an injured plaintiff should not be fully compensated for their damages. To abolish joint and several liability would absolutely create a myriad of situations in which a plaintiff would not be fully compensated for their injuries. The impact is demonstrated when the necessity arises to protect the plaintiff from their inability to collect an award. Under typical joint and several liability repeal legislation, the plaintiff

would bear the burden of enforcing collection from each of the defendants that the court apportions responsibility for damages. Additionally, under general repeal legislation, non parties to the suit can be joined for apportionment purposes by any party. This clearly creates an atmosphere of finger pointing among defendants including allegations regarding the most obtuse and/or immaterial parties. Effectually this will merely create more litigation, clog the courts and would in no way remedy the primary issue, the plaintiff's injury!

You've heard from this Bar Association as well as others on previous occasions opposing similar legislation. And then as well as now we call your attention to clear examples and real cases which demonstrate the ill effect an abolition of joint and several liability would create. You've heard before about the case in which a welder was ordered to locate the source of a leak in a tank at a power plant. The tank was filled with molten ash and during his inspection, the tank burst covering the welder with the molten ash, burning off his ears, fusing fingers and badly scarring 70% of his body. He bought suit against the companies that designed the tank who then in turn joined the company that constructed the bin. They in turn joined the company that designed the software that designed the tank! This is the aformentioned stream of finger pointing – the "it wasn't us it was them" defense. Of these subcontractors, one was in bankruptcy and another had insufficient insurance. So where does that leave the plaintiff under typical repeal legislation? These defendants would be apportioned responsibility and separate judgments against each defendant would be entered. Given a bankrupt

defendant, clearly the welder would not be able to collect damages from that party nor likely from the company with insufficient insurance. It makes no sense that the injured victim would be deprived of damages and would have to pursue this cast of defendants to seek recourse.

Without the doctrine of joint and several liability, plaintiffs would be required to sue those only marginally involved in order to get any coverage. As I have said, the rule of joint and several liability is common sense. It causes the wrongdoers, and not the victims to bear the burden of litigation.